

DPAS

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

15 CFR 700



Office of Strategic Industries and Economic Security
Bureau of Export Administration
U.S. Department of Commerce

Revised Edition
August 1998

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Questions about the *Defense Priorities and Allocations System* (DPAS), requests for additional copies of this booklet, or requests for any DPAS training materials should be directed to the Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, Ref. DPAS; telephone (202) 482-3634; or FAX (202) 482-5650. This booklet, including Form BXA-999 (Request for Special Priorities Assistance), may also be accessed through the Department of Commerce/Bureau of Export Administration Internet web site at: <http://www.bxa.doc.gov>. *This booklet supersedes the booklet first published in October 1994 and all subsequent reprints. Please discard all printings dated prior to August 1998.*

PREFACE

Under Title I of the Defense Production Act of 1950, as amended (DPA), the President is authorized to require preferential acceptance and performance of contracts or orders supporting certain approved national defense and energy programs, and to allocate materials, services, and facilities in such a manner as to promote these approved programs. Additional priorities authority to require prompt delivery of articles and materials for the exclusive use of the U.S. armed forces is found in Section 18 of the Selective Service Act of 1948, in 10 U.S.C. 2538, and in 50 U.S.C. 82. The DPA priorities and allocations authority has also been extended to support emergency preparedness activities under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Executive Orders 12919 and 12742 delegate authority to carry out these authorities for industrial resources to the Department of Commerce. Within Commerce, the Office of Strategic Industries and Economic Security (SIES) is assigned the responsibility for administering a system of priorities and allocations with respect to these resources. The Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700) was established for this purpose in August 1984, superseding the rules of the Defense Materials System (DMS) and Defense Priorities System (DPS).

On June 11, 1998, in consideration of numerous comments from industry and government users, termination of the controlled materials (steel, copper, aluminum, and nickel alloys) program, and to make the DPAS more effective and efficient in the post-Cold War era, we published in the Federal Register (63 FR 31918) a revision of the DPAS to update, modify, and clarify a number of its provisions. Changes include removing the controlled materials rules, extending the time for a supplier to accept or reject a rated order, simplifying the rules for combining rated and unrated orders, clarifying the rules for determining the precedence of conflicting rated orders of equal priority after acceptance of these orders, increasing the minimum rated order dollar amount, and various technical and administrative adjustments.

The purpose of the DPAS remains unchanged: (1) to assure the timely availability of industrial resources to meet current national defense and emergency preparedness program requirements; and (2) to provide an operating system to support rapid industrial response in a national emergency. In pursuing these goals, we attempt to minimize disruptions to normal commercial activities. In view of our shrinking domestic defense industrial base, the growing commercialization of defense procurement, the increasing use of dual use products and technologies and just-in-time production and inventory techniques, the consequences of catastrophic natural, accidental, or man-caused disaster events upon our civilian population, and the ongoing requirement for our Nation to maintain a strong defense preparedness and military readiness capability, the DPAS will continue to be a key element of our national security and civil emergency preparedness.

Section A of this publication includes the DPAS regulation, DPAS Schedule 1 (Approved Programs and Delegate Agencies), and DPAS Appendix I: Form BXA-999 (formerly ITA-999); Section B contains questions with answers about the DPAS; and Section C contains the priorities and allocations provisions of the DPA and Selective Service Act, and the civil emergency preparedness provisions of Section 602 of the Stafford Act.

Not included in this publication because they are of limited public interest are: other DPAS appendices which include the DPAS Delegations of Authority from the Department of Commerce to user agencies (Departments of Defense and Energy, the General Services Administration, and the Federal Emergency Management Agency); Interagency Memoranda of Understanding between the Department of Commerce and the Departments of Agriculture, Energy, and the Interior; the Memorandum of Understanding on Priorities and Allocations Support between the Department of Commerce and the Canadian Department of Public Works and Government Services Canada; and DPAS Emergency Delegation 1. Also not included are the priorities provisions of 10 U.S.C. 2538 and 50 U.S.C. 82. Copies of these documents may be obtained from SIES (see section 700.93 of the DPAS for contact information).

A unique feature of the DPAS is the Overview (Subpart B) which contains a summary of the system's major provisions. We suggest that if you are not familiar with the DPAS, you should first review this subpart as an aid to understanding and using the system.

Although following the provisions of the DPAS is a legal requirement incurred by all persons who receive contracts or orders that have been priority rated under the DPAS, it makes good business sense to be fully familiar with the system. For example, because a vendor is required to fill rated orders on a preferential basis, contractors have greater assurance of obtaining materials even in times of scarcity. This can be an important factor in developing competitive bids for defense contracts.

In addition, "special priorities assistance" is available from Commerce and the Delegate Agencies to assist any person who places or receives a rated order. For example, assistance can be provided to expedite deliveries, locate suppliers, obtain production equipment, expand plant facilities, or rebuild or repair damaged or destroyed facilities.

The success of our priorities and allocations program, and ultimately, the continuing strength of our national defense and security, rests upon industry's ability to produce the materials and equipment needed for national defense and energy programs. In turn, this requires a cooperative effort between government and industry to ensure that programs of national importance are given preferential treatment when necessary.

Richard V. Meyers
DPAS Program Manager

August 1998

SECTION A

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

15 CFR Part 700

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Canadian Public Works and Government Services Canada*

Appendix V to Part 700: DPAS Emergency Delegation 1*

* Not included in this publication. See section 700.93 of the regulation for information about how to obtain copies of these documents.

AUTHORITY

Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), and Executive Order 12919 of June 3, 1994 (59 FR 29525; 3 CFR 1994 Comp., p. 901); Section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742 of January 8, 1991 (56 FR 1079; 3 CFR 1991 Comp. P. 309); and Executive Order 12656 of November 18, 1988 (53 FR 226; 3 CFR 1988 Comp. P. 585).

Note to Users: Although the term “this part” (15 CFR 700) is used to refer to the DPAS regulation in the Notice of Final Rulemaking published in the Federal Register on June 11, 1998 (63 FR 31918) to revise the DPAS, the term “this regulation” is used in the text of the revised provisions in this booklet to refer to the DPAS regulation for consistency with text that was not revised.

Subpart A - PURPOSE

700.1 Purpose of this regulation.

(a) Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.) (Defense Production Act), authorizes the President: to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; to allocate materials, services, and facilities as necessary or appropriate to promote the national defense; and to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials, equipment, and services in order to assure domestic energy supplies for national defense needs.

(b) Section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468) (Selective Service Act) authorizes the President to place an order with a supplier for any articles or materials required for the exclusive use of the U.S. armed forces whenever the President determines that in the interest of national security, prompt delivery of the articles and materials is required. The supplier must give precedence to the order so as to deliver the articles or materials in a required time period. 10 U.S.C. 2538, and 50 U.S.C. 82, provide similar authority specifically for Department of Defense procurement, but only in time of war or when war is imminent.

(c) Section 602(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (41 U.S.C. 5195a(b)) provides that the terms "national defense" and "defense" as used in the Defense Production Act includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act. The definition of "national defense" in Section 702(13) of the Defense Production Act provides that this term includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act.

(d) The Defense Priorities and Allocations System (DPAS) regulation implements the priorities and allocations authority of the Defense Production Act and as this authority pertains to Title VI of the Stafford Act, and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS ensures the timely availability of industrial resources for approved programs and provides an operating system to support rapid industrial response to a national emergency.

(e) To aid in understanding and using the DPAS, an overview of its major provisions is incorporated into this regulation as Subpart B - Overview. The full text of the DPAS is found in Subparts D through L.

Subpart B - OVERVIEW

700.2 Introduction.

(a) Certain national defense and energy programs (including emergency preparedness activities) are approved for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are "approved programs." A complete list of currently approved programs is provided at Schedule 1 to this regulation.

(b) The Department of Commerce administers the DPAS to ensure the timely delivery of industrial items to meet approved program requirements.

(c) Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to the government agencies that issue such contracts or orders. Schedule 1 includes a list of agencies delegated this authority. Copies of the Delegations of Authority are provided at Appendix II. They set forth the authorities delegated and those retained by Commerce.

700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating consisting of the rating - either DX or DO - and a program identification symbol. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over DO rated orders. Program identification symbols indicate which approved program is involved with the rated order. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. The program identification symbols, in themselves, do not connote any priority.

(b) Persons receiving rated orders must give them preferential treatment as required by this regulation. This means a person must accept and fill a rated order for items that the person normally supplies. The existence of previously accepted unrated or lower rated orders is not sufficient reason for rejecting a rated order. Persons are required to reschedule unrated orders if they conflict with performance against a rated order. Similarly, persons must reschedule DO rated orders if they conflict with performance against a DX rated order.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this regulation.

700.4 Priorities and allocations in a national emergency.

(a) In the event of a national emergency, special rules may be established as needed to supplement this regulation, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense requirements, including emergency preparedness requirements, of approved programs.

(b) The special rules established in response to the emergency may include provisions for the taking of certain emergency official actions and the allocation of critical and scarce materials and facilities.

700.5 Special priorities assistance.

(a) The DPAS is designed to be largely self-executing. However, from time-to-time production or delivery problems will arise. In this event, special priorities assistance is available from Commerce and from the Delegate Agencies.

(b) Special priorities assistance is available for any reason consistent with this regulation. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items not automatically ratable.

700.6 Official actions.

When necessary, Commerce takes specific official actions to implement or enforce the provisions of this regulation and to provide special priorities assistance. Such actions may include the issuance of: Rating Authorizations, Directives, Letters of Understanding, Set-asides, and compliance documents (Administrative Subpoenas, Demands for Information, and Inspection Authorizations).

700.7 Compliance.

(a) Compliance with the provisions of this regulation and official actions is required by the Defense Production Act and the Selective Service Act and related statutes. Violators are subject to criminal penalties.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

Subpart C - DEFINITIONS

700.8 Definitions.

In addition to the definitions provided in Section 702 of the Defense Production Act (excepting the definition of "industrial resources") and Section 602(a) of the Stafford Act, the following definitions pertain to all sections of the regulation:

"Approved program" - a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, Secretary of Energy, or the Director, Federal Emergency Management Agency, under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes and Executive Order 12742.

"Construction" - the erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

"Delegate Agency" - a government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

"Defense Production Act" - the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.).

"Industrial resources" - all materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under E.O. 12919. This term also includes the term "item" as defined and used in this regulation.

"Item" - any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

"Maintenance and repair and operating supplies (MRO)" -

(a) *"Maintenance"* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(b) *"Repair"* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(c) *"Operating supplies"* are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(d) *MRO* does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

"Official action" - an action taken by Commerce under the authority of the Defense Production Act, the Selective Service Act and related statutes, and this regulation. Such actions include the issuance of Rating Authorizations, Directives, Letters of Understanding, Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

"Person" - any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any authorized State or local government or agency thereof; and for purposes of administration of this regulation, includes the United States Government and any authorized foreign government or agency thereof, delegated authority as provided in this regulation.

"Production equipment" - any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of \$2,500 or more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

"Rated order" - a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this regulation.

"Selective Service Act and related statutes" - Section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, and 50 U.S.C. 82.

"Set-aside" - the amount of an item for which a supplier must reserve order book space in anticipation of the receipt of rated orders.

"Stafford Act" - Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195 et seq.).

Subpart D - INDUSTRIAL PRIORITIES

700.10 Delegation of authority.

(a) The priorities and allocations authorities of the President under Title I of the Defense Production Act with respect to industrial resources have been delegated to the Secretary of Commerce under Executive Order 12919 of June 3, 1994 (59 FR 29525). The priorities authorities of the President under the Selective Service Act and related statutes with respect to industrial resources have also been delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (56 FR 1079).

(b) Within the Department of Commerce, these responsibilities have been assigned to the Office of Strategic Industries and Economic Security. The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for items needed for approved programs. Copies of these Delegations of Authority are provided at Appendix II. They set forth the authorities delegated and those retained by Commerce.

700.11 Priority ratings.

(a) *Levels of priority.* (1) There are two levels of priority established by this regulation, identified by the rating symbols "DO" and "DX".

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. [For resolution of conflicts among rated orders of equal priority, see section 700.14(c).]

(3) In addition, a Directive issued by Commerce takes preference over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. [For a full discussion of Directives, see section 700.62.]

(b) *Program identification symbols.* Program identification symbols indicate which approved program is being supported by a rated order. The list of approved programs and their identification symbols are listed in Schedule 1. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol - DO or DX - and the program identification symbol, such as A1, B2, or H6. Thus, a contract for the production of an aircraft will contain a DO-A1 or DX-A1 priority rating. A contract for a radar set will contain a DO-A7 or DX-A7 priority rating.

700.12 Elements of a rated order.

Each rated order must include:

- (a) The appropriate priority rating (e.g. DO-A1, DX-A4, DO-H1);
- (b) A required delivery date or dates. The words "immediately" or "as soon as possible" do not constitute a delivery date. A "requirements contract", "basic ordering agreement", "prime vendor contract", or similar procurement document bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as "calls", "requisitions", and "delivery orders". These purchase orders must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;
- (c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this regulation and that the requirements of this regulation are being followed; and
- (d) A statement that reads in substance:

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR 700).

700.13 Acceptance and rejection of rated orders.

- (a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.
- (2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.
- (b) *Mandatory rejection.* Unless otherwise directed by Commerce:
 - (1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date.

Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is obligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act or the Selective Service Act and related statutes (see section 700.75).

(d) Customer notification requirements. (1) A person must accept or reject a rated order in writing or electronically within fifteen (15) working days after receipt of a DO rated

order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in writing (not electronically) for the rejection.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days. [The information collection requirements in paragraphs (d)(1) and (d)(2) are approved by the Office of Management and Budget under OMB control number 0694-0053.]

700.14 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order.

(c) *Conflicting rated orders.* (1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person shall give preference to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting orders are scheduled to be delivered or performed on the same day, the person shall give preference to those orders which have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in sections 700.50 through 700.54. If the person's customer objects to the rescheduling of

delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in sections 700.50 through 700.54. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in section 700.13(d)(2).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in section 700.17(b).

700.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this regulation or as directed by the Department of Commerce.

For example, if a person is in receipt of a DO-A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO-A3 rated order to obtain the needed semiconductors.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

700.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or canceled by:

(1) An official action of the Department of Commerce; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended so as to make it a rated order, or a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of section 700.13.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design; or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items to fill a rated order, any rated orders placed with suppliers for the items, or the priority rating on those orders, must be canceled.

(f) When a priority rating is added to an unrated order, or is changed or canceled, all suppliers must be promptly notified in writing.

700.17 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed or converted into scrap or by-products in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders. However, for MRO, the priority rating used must contain the program identification symbol H7 along with the rating symbol contained on the customer's rated order. For example, a person in receipt of a DO-A3 rated order, who needs MRO, would place a DO-H7 rated order with the person's supplier.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol H1 must be used (i.e., DO-H1).

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol H1 (i.e., DO-H1 or DX-H1).

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by section 700.12, are included on the order with the statement required in section 700.12(d) modified to read in substance:

This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR Part 700) only as it pertains to the rated quantities.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in section 700.13 and give preferential treatment only to the rated quantities as required by this regulation. This regulation may not be used to give preferential treatment to the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this regulation or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under section 700.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c), if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than \$50,000, or one half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold (see FAR section 2.101), whichever amount is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

700.18 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a DO or DX rated order unless entitled to do so under this regulation.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items in advance of the receipt of a rated order, except as specifically authorized by Commerce (see section 700.51(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or Commerce:

(A) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see section 700.5-1.]

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(b) *Jurisdictional limitations.* (1) The priorities and allocations authority for certain items has been delegated under Executive Orders 12919 and 12742, other executive order, or Interagency Memoranda of Understanding to other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this regulation are not applicable to these items which include:

(i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture -- see Attachment A to DPAS Delegation 1 in Appendix II to Part 700 concerning combat rations);

(ii) All forms of energy, including radioisotopes, stable isotopes, source material, and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy (Department of Energy);

(iii) Health resources (Department of Health and Human Services);

(iv) All forms of civil transportation (Department of Transportation);

(v) Water resources (Department of Defense/U.S. Army Corps of Engineers);

(vi) Communication services (National Communications System under Executive Order 12472 of April 3, 1984); and

(vii) Mineral resources and mineral processing facilities (Department of Interior/U.S. Geological Survey -- see Memorandum of Understanding Between Interior and Commerce in DPAS Appendix III to Part 700).

(2) The jurisdiction of the Department of Commerce and the Departments of Energy, Agriculture, and the Interior over certain specific items included in the categories listed above has been clarified by Interagency Memoranda of Understanding. Copies of these Memoranda are provided for information at Appendix III.

(3) The following items under the jurisdiction of Commerce are currently excluded from the rating provisions of this regulation; however, these items are subject to Commerce Directives. These excluded items are:

- Copper raw materials
- Crushed stone
- Gravel
- Sand
- Scrap
- Slag
- Steam heat, central
- Waste paper

Subpart E - INDUSTRIAL PRIORITIES FOR ENERGY PROGRAMS

700.20 Use of priority ratings.

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which maintain or expand domestic energy exploration, production, refining, and transportation; conserve energy supplies; or are involved in the construction or maintenance of energy facilities.

700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or

maintenance of equipment) by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the U.S. Department of Energy, Office of Clearance and Support, Field/Headquarters Support Division, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Attn.: PR-132.

(b) On receipt of the application, the Department of Energy will:

(1) Determine if the project maximizes domestic energy supplies; and

(2) Find whether the materials, equipment, or services involved in the application are critical and essential to the project.

(c) If the Department of Energy notifies Commerce that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, Commerce must find whether the items in question are scarce and whether there is a need to use the priorities and allocations authorities.

(1) Scarcity implies an unusual difficulty in obtaining the material, equipment, or services in a time frame consistent with the timely completion of the energy project. Among the factors to be used in making the scarcity finding will be the following:

(i) Value and volume of material or equipment shipments;

(ii) Consumption of material and equipment;

(iii) Volume and market trends of imports and exports;

(iv) Domestic and foreign sources of supply;

(v) Normal levels of inventories;

(vi) Rates of capacity utilization;

(vii) Volume of new orders; and

(viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities and allocations authorities, Commerce will consider alternative supply solutions and other measures.

(d) If Commerce does not find that the items of material, equipment, or services are scarce, it will not proceed to analyze the need to use the priorities and allocations authorities.

(e) Commerce will inform the Department of Energy of the results of its analysis. If Commerce has made the two required findings, it will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(f) Schedule 1 includes a list of approved programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR Part 216.

Subpart F - NATIONAL EMERGENCY PREPAREDNESS AND CRITICAL ITEMS

700.30 Priorities and allocations in a national emergency.

(a) In the event of a national emergency, special rules may be established as needed to supplement this regulation, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense requirements, including domestic emergency preparedness requirements, of approved programs.

(1) *Emergency official actions.* (i) As needed, this regulation may be supplemented to include additional definitions to cover civilian emergency preparedness industrial items, support for essential civilian programs, and provisions for the taking of certain emergency official actions under sections 700.60 through 700.63.

(ii) Emergency official actions may include:

(A) Controlling inventories of critical and scarce defense and/or emergency preparedness items;

(B) Restricting the purchase, use, or distribution of critical and scarce defense and/or emergency preparedness items, or the use of production or distribution facilities, for non-essential purposes; and

(C) Converting the production or distribution of non-essential items to the production or distribution of critical and scarce defense and/or emergency preparedness items.

(2) *Allocation of critical and scarce items and facilities.* (i) As needed, this regulation may be supplemented to establish special rules for the allocation of scarce and critical items and facilities to ensure the timely availability of these items and facilities for approved programs, and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items. These rules may provide for the allocation of individual items or they may be broad enough to direct general industrial activity as required in support of emergency requirements.

(ii) Allocation rules (i.e., controlled materials programs) were established in response to previous periods of national security emergency such as World War II and the Korean Conflict. The basic elements of the controlled materials programs were the set-aside (the amount of an item for which a producer or supplier must reserve order book space in anticipation of the receipt of rated orders), the production directive (requires a producer to supply a specific quantity, size, shape, and type of an item within a specific time period), and the allotment (the maximum quantity of an item authorized for use in a specific program or application). These elements can be used to assure the availability of any scarce and critical item for approved programs. Currently, a set-aside applies only to metalworking machines (see §700.31).

(3) In the event that certain critical items become scarce, and approved program requirements for these items cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, Commerce may establish special rules under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

(b) *Regional Emergency Coordinators.* (1) If due to a catastrophic national security emergency event, communications with Commerce headquarters in Washington, D.C. are severed, DPAS Emergency Delegation 1 will provide authority to the Regional Emergency Coordinators (REC) located in the Standard Federal Region Council cities (Boston, New York, Philadelphia, Atlanta, Dallas, Kansas City, Chicago, Denver, San Francisco, and Seattle) to represent the Secretary of Commerce, and as necessary, act for the Secretary to carry out the emergency industrial production and distribution control functions of Commerce as set forth in this regulation, in any supplement thereto, or other applicable authority. See DPAS Emergency Delegation 1 (Appendix V to Part 700) for further information about the authority and duties of the RECs, and the effective date of the Delegation.

(2) If DPAS Delegation 1 is implemented due to a catastrophic national security emergency event, requests for special priorities assistance under sections 700.50 through 700.55 of this regulation should be filed with the nearest Regional Emergency Coordinator located in one of the Standard Federal Region Council cities as provided in DPAS Delegation 1 (Appendix V to Part 700).

§ 700.31 *Metalworking Machines.*

(a) "Metalworking machines" include power driven, manual or automatic, metal cutting and metal forming machines, and complete machines not supported in the hands of an operator when in use. Basic machines with a list price of \$2,500 or less are not covered by this section.

(b) Metalworking machines covered by this section include:

Bending and forming machines
Boring machines
Broaching machines
Drilling and tapping machines
Electrical discharge, ultrasonic, and chemical erosion machines
Forging machinery and hammers
Gear cutting and finishing machines
Grinding machines
Hydraulic and pneumatic presses, power driven
Machining centers and way-type machines
Manual presses
Mechanical presses, power driven
Milling machines
Miscellaneous machine tools
Miscellaneous secondary metal forming and cutting machines, planers and shapers
Polishing, lapping, boring, and finishing machines
Punching and shearing machines
Riveting machines
Saws and filing machines
Turning machines, lathes, including automatic
Wire and metal ribbon forming machines

(c) A metalworking machine producer is not required to accept DO rated orders calling for delivery in any month of a total quantity of any size of machine in excess of 60 percent of scheduled production of that size of machine for that month, or any DO rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date.

Subpart G - [RESERVED]

Subpart H - SPECIAL PRIORITIES ASSISTANCE

700.50 General provisions.

(a) The DPAS is designed to be largely self-executing. However, it is anticipated that from time-to-time problems will occur. In this event, a person should immediately contact the appropriate contract administration officer for guidance or assistance. If additional formal aid is needed, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the

Delegate Agency may forward the request to the Department of Commerce for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance can be provided for any reason in support of this regulation, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this regulation.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form BXA-999 (OMB control number 0694-0057) to the local contract administration representative. Form BXA-999 may be obtained from the Delegate Agency representative or from the Department of Commerce. A sample Form BXA-999 is attached at Appendix I.

700.51 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this regulation, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

- (1) Production or construction equipment;
- (2) Computers when not used as production items; and
- (3) Expansion, rebuilding or replacing plant facilities.

(b) Rating authority for production or construction equipment. (1) A request for priority rating authority for production or construction equipment must be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (e.g., Department of Defense Form DD-691.)

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) Rating authority in advance of a rated prime contract. (1) In certain cases and upon specific request, Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also

assume any business risk associated with the placing of rated orders if these orders have to be canceled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce, or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, Commerce will consider, among other things, the following criteria:

- (i) The probability that the prime contract will be awarded;
- (ii) The impact of the resulting rated orders on suppliers and on other authorized programs;
- (iii) Whether the contractor is the sole source;
- (iv) Whether the item being produced has a long lead time;
- (v) The political sensitivity of the project; and
- (vi) The time period for which the rating is being requested.

(4) Commerce may require periodic reports on the use of the rating authority granted under this subsection.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is canceled.

700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

700.53 Criteria for assistance.

Requests for special priorities assistance should be timely, i.e., the request has been submitted promptly and enough time exists for the Delegate Agency or Commerce to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

700.54 Instances where assistance may not be provided.

Special priorities assistance is provided at the discretion of the Delegate Agencies and Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance may not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

- (c) Gain competitive advantage;
- (d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or
- (e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

700.55 Assistance programs with Canada and other nations.

(a) To promote military assistance to foreign nations, this section provides for authorizing priority ratings to persons in Canada and in other foreign nations to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada.

(b) *Canada.* (1) The joint U.S.-Canadian military arrangements for the defense of North America and the integrated nature of their defense industries as set forth in the U.S.-Canadian Statement of Principles for Economic Cooperation (October 26, 1950) require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(2) The Department of Commerce coordinates with the Canadian Public Works and Government Services Canada on all matters of mutual concern relating to the administration of this regulation. A copy of the Memorandum of Understanding between the two departments is provided at Appendix IV.

(3) Any person in the United States ordering defense items in Canada should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, they should contact the Canadian Public Works and Government Services Canada for authority to place rated orders in the United States.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Public Works and Government Services Canada in accordance with procedures specified by that Department.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply for such assistance to the Canadian Public Works and Government Services Canada. Public Works and Government Services Canada will forward requests to Commerce.

(6) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to Commerce on Form BXA-999. Commerce will forward appropriate requests to the Canadian Public Works and Government Services Canada.

(c) *Foreign nations.* (1) Any person in a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should apply for such assistance or rating authority to the U.S. Department of Defense. The request must be sponsored by the government of the foreign nation prior to its submission.

(2) If the Department of Defense endorses the request, it will be forwarded to Commerce for appropriate action.

Subpart I - OFFICIAL ACTIONS

700.60 General provisions.

(a) Commerce may from time-to-time, take specific official actions to implement or enforce the provisions of this regulation.

(b) Several of these official actions (Rating Authorizations, Directives, and Letters of Understanding are discussed in this Subpart. Other official actions which pertain to compliance (Administrative Subpoenas, Demands for Information, and Inspection Authorizations) are discussed in section 700.71(c).

700.61 Rating Authorizations.

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item not normally ratable under this regulation; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see section 700.51.

700.62 Directives.

(a) A Directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) Directives take precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

700.63 Letters of Understanding.

(a) A Letter of Understanding is an official action which may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (Commerce, the Delegate Agency, the supplier, and the customer).

(b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this regulation, or to take other official actions. Rather, Letters of Understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

Subpart J - COMPLIANCE

700.70 General provisions.

(a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action. Such actions include audits, investigations, or other inquiries.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

(c) Willful violation of the provisions of Title I or Section 705 of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action of the Department of Commerce, is a criminal act, punishable as provided in the Defense Production Act, the Selective Service Act and related statutes, and as set forth in section 700.74 of this regulation.

700.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, the Selective Service Act and related statutes, this regulation, and official actions have been

properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this regulation.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this regulation, Commerce may issue the following documents which constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demands for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Commerce any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of the Department of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings, and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions.

(d) The production of books, records, documents, other writings, and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of the Department of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of Commerce as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization, shall include the name, title, or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail-Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone of suitable age and discretion at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions, the Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including ex parte application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Industrial Resource Administration, U.S. Department of Commerce, in consultation with the Chief Counsel for Export Administration, U.S. Department of Commerce, there is reason to believe that a person

will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action were not met.

(b) In cases where Commerce determines that failure to comply with the provisions of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action.

700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes, this regulation, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act are a \$10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act and related statutes are a \$50,000 fine, or three years in prison, or both.

(b) The Government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this regulation, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act, the Selective Service Act and related statutes, this regulation, and official actions, the following are prohibited (see Section 704 of the Defense Production Act; see also, for example, Sections 2 and 371 of Title 18, United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

700.75 Compliance conflicts.

If compliance with any provision of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action, the person must immediately notify the Department of Commerce for resolution of the conflict.

Subpart K - ADJUSTMENTS, EXCEPTIONS, AND APPEALS

700.80 Adjustments or exceptions.

(a) A person may submit a request to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this regulation or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequences of following a provision of this regulation or an official action is contrary to the intent of the Defense Production Act, the Selective Service Act and related statutes, or this regulation.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this regulation or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Strategic Industries and Economic Security.

(d) A decision of the Office of Strategic Industries and Economic Security under this section may be appealed to the Assistant Secretary for Export Administration, U.S. Department of Commerce. (For information on the appeal procedure, see section 700.81.)

700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Strategic Industries and Economic Security under section 700.80, may appeal to the Assistant Secretary for Export Administration, U.S. Department of Commerce, who shall review and reconsider the denial.

(b) An appeal must be received by the Office of the Assistant Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Washington, D. C. 20230, Ref: DPAS, no later than 45 days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 45 day period, an appeal may be accepted at the discretion of the Assistant Secretary for Export Administration for good cause shown.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Assistant Secretary for Export Administration.

(e) When a hearing is granted, the Assistant Secretary for Export Administration may designate an employee of the Department of Commerce to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Assistant Secretary for Export Administration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Commerce, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the appeal is being considered unless such relief is granted in writing by the Assistant Secretary for Export Administration.

(h) The decision of the Assistant Secretary for Export Administration shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

Subpart L - MISCELLANEOUS PROVISIONS

700.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this regulation, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

700.91 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this regulation (OMB control number 0694-0053) or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this regulation or any official action. However, this regulation does not specify any particular method or system to be used.

(c) Records required to be maintained by this regulation must be made available for examination on demand by duly authorized representatives of Commerce as provided in section 700.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to Commerce that may be required for the administration of the Defense Production Act, the Selective Service Act and related statutes, and this regulation.

(e) Section 705(e) of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to Commerce in connection with the enforcement or administration of the Defense Production Act, this regulation, or an official action, is deemed to be confidential under section 705(e) of the Defense Production Act and shall not be published or disclosed except as required by law.

700.92 Applicability of this regulation and official actions.

(a) This regulation and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This regulation and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This regulation and its schedules shall not be construed to affect any administrative actions taken by Commerce, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules or delegations of authority under the Defense Materials System and Defense Priorities System previously issued by Commerce. Such actions, contracts, or orders shall continue in full force and effect under this regulation unless modified or terminated by proper authority.

(d) The repeal of the regulations, orders, schedules and delegations of authority of the Defense Materials System (DMS) and Defense Priorities System (DPS) shall not have the effect to release or extinguish any penalty or liability incurred under the DMS/DPS. The DMS/DPS shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

700.93 Communications.

All communications concerning this regulation, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Office of Strategic Industries and Economic Security, Ref: DPAS;
telephone: (202) 482-3634 or FAX: (202) 482-5650.

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

SCHEDULE 1 TO PART 700

Approved Programs and Delegate Agencies

The programs listed in this schedule have been approved for priorities and allocations support under this regulation. They have equal preferential status. The Department of Commerce has authorized the Delegate Agencies to use this regulation in support of those programs assigned to them, as indicated below.

Program Identification Symbol	Approved Program	Delegate Agency
-------------------------------------	------------------	-----------------

DEFENSE PROGRAMS:

A1 -- Aircraft	Department of Defense ¹
A2 -- Missiles	Do
A3 -- Ships	Do
A4 -- Tank - Automotive	Do
A5 -- Weapons	Do
A6 -- Ammunition	Do
A7 -- Electronic and communications equipment	Do
B1 -- Military building supplies	Do
B8 -- Production equipment (for defense contractor's account).	Do
B9 -- Production equipment (Government owned)	Do
C1 -- Food resources (combat rations)	Do
C2 -- Department of Defense construction	Do
C3 -- Maintenance, repair, and operating supplies (MRO) for Department of Defense facilities	Do
C9 -- Miscellaneous	Do

INTERNATIONAL DEFENSE PROGRAMS:

Canada

D1 -- Canadian military programs	Department of Commerce
D2 -- Canadian production and construction	Do
D3 -- Canadian atomic energy program	Do

Other Foreign Nations

G1 -- Certain munitions items purchased by foreign governments through domestic commercial channels for export	Department of Commerce
G2 -- Certain direct defense needs of foreign governments other than Canada	Do
G3 -- Foreign nations (other than Canada) production and construction	Do

Co-Production

J1 -- F-16 co-production program	Departments of Commerce and Defense
--	--

ATOMIC ENERGY PROGRAMS:

E1 -- Construction	Department of Energy
E2 -- Operations - including maintenance, repair, and operating supplies (MRO)	Do
E3 -- Privately owned facilities	Do

DOMESTIC ENERGY PROGRAMS:

F1 -- Exploration, production, refining, and transportation	Department of Energy
F2 -- Conservation	Do
F3 -- Construction, repair, and maintenance	Do

OTHER DEFENSE, ENERGY, AND RELATED PROGRAMS:

H1 -- Certain combined orders (see section 700.17(c))	Department of Commerce
H5 -- Private domestic production	Do
H6 -- Private domestic construction	Do
H7 -- Maintenance, repair, and operating supplies (MRO)	Do
H8 -- Designated programs	Do

K1 -- Federal supply items General Services
Administration

N1 -- Emergency preparedness activities Federal Emergency
Management Agency

¹ Department of Defense includes: Armed Services - Army, Navy (including Marines and Coast Guard), and Air Force; Component Agencies, including Defense Logistics Agency, National Security Agency, Defense Advanced Research Projects Agency, Defense Information Systems Agency, Defense Nuclear Agency, Defense Mapping Agency, and On-Site Inspection Agency; and Associated Agencies, including Central Intelligence Agency and National Aeronautics and Space Administration.

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

APPENDIX I

Form BXA-999

Request For Special Priorities Assistance

Copies of this form are available from any Department of Defense Contract Management Area Office; or from the U.S. Department of Commerce, Office of Strategic Industries and Economic Security (SIES). You may contact SIES at telephone no. (202) 482-3634, or FAX no. (202) 482-5650. This form can be sent to you in hard copy through the mail, by FAX, by e-mail, or it may be downloaded from the Department of Commerce/Bureau of Export Administration Internet web site at: <http://www.bxa.doc.gov>.

Please see the last page of the form (page A-42 below) for complete information about how to fill it out and file it, or to contact DPAS staff at SIES for further information.

REQUEST FOR SPECIAL PRIORITIES ASSISTANCE

READ INSTRUCTIONS ON BACK PAGE
TYPE OR PRINT IN INK

CASE NO. _____

RECEIVED _____

ASSIGNED TO _____

Submission of a completed application is required to request Special Priorities Assistance (SPA). See sections 700.50-55 of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700). It is a criminal offense under 18 U.S.C. 1001 to make a wilfully false statement or representation to any U.S. Government agency as to any matter within its jurisdiction. All company information furnished related to this application will be deemed BUSINESS CONFIDENTIAL under Sec. 705(d) of the Defense Production Act of 1950 [50 U.S.C. App. 2155(d)] which prohibits publication or disclosure of this information unless the President determines that withholding it is contrary to the interest of the national defense. The Department of Commerce will assert the appropriate Freedom of Information Act (FOIA) exemptions if such information is the subject of FOIA requests. The unauthorized publication or disclosure of such information by Government personnel is prohibited by law. Violators are subject to fine and/or imprisonment.

1. APPLICANT INFORMATION

a. Name and complete address of Applicant (Applicant can be any person needing assistance - government agency, contractor, or supplier. See definition of "Applicant" in Footnotes section on back page of this form).

Contact's name _____

Title _____

Telephone _____

FAX _____

b. If Applicant is not end-user Government agency, give name and complete address of Applicant's customer.

Contact's name _____

Title _____

Telephone _____ FAX _____

Contract/purchase order no. _____

Dated _____ Priority rating _____

2. APPLICANT ITEM(S). If Applicant is **not** end-user Government agency, describe item(s) to be delivered by Applicant under its customer's contract or purchase order through the use of item(s) listed in Block 3. If known, identify Government program and end-item for which these items are required. If Applicant **is** end-user Government agency and Block 3 item(s) are not end-items, identify the end-item for which the Block 3 item(s) are required. See definition of "item" in Footnotes section on page 4 of this form.

3. ITEM(S) (including service) FOR WHICH APPLICANT REQUESTS ASSISTANCE

Quantity <i>Pieces, units</i>	Description <i>Include identifying information such as model or part number</i>	Dollar Value <i>Each quantity listed</i>

4. SUPPLIER INFORMATION

a. Name and complete address of Applicant's Supplier.

Contact's name _____

Title _____

Telephone _____ FAX _____

b. Applicant's contract or purchase order to Supplier.

Number _____

Dated _____

Priority rating _____

*(If none, so state)**If Supplier is an agent or distributor, give complete producer or lower tier supplier information in Continuation Block on page 3, including purchase order number, date, and priority rating (if none, so state).***5. SHIPMENT SCHEDULE OF ITEM(S) SHOWN IN BLOCK 3**

a. Applicant's <u>original</u> shipment/performance requirement	Month Year							Total <u>units</u>
	Number of units							
b. Supplier's <u>original</u> shipment/performance promise	Month Year							Total <u>units</u>
	Number of units							
c. Applicant's <u>current</u> shipment/performance requirement	Month Year							Total <u>units</u>
	Number of units							
d. Supplier's <u>current</u> shipment/performance promise	Month Year							Total <u>units</u>
	Number of units							

6. REASONS GIVEN BY SUPPLIER for inability to meet Applicant's required shipment or performance date(s).

7. BRIEF STATEMENT OF NEED FOR ASSISTANCE. As applicable, explain effect of delay in receipt of Block 3 item(s) on achieving timely shipment of Block 2 item(s) (e.g., production line shutdown), or the impact on program or project schedule. Describe attempts to resolve problems and give specific reasons why assistance is required. If priority rating authority is requested, please so state.

8. CERTIFICATION: I certify that the information contained in Blocks 1 - 7 of this form, and all other information attached, is correct and complete to the best of my knowledge and belief (omit signature if this form is electronically generated and transmitted - use of name is deemed certification).

Signature of Applicant's authorized official_____
Title_____
Print or type name of authorized official_____
Date

9. U.S. GOVERNMENT AGENCY INFORMATION

a. Name/complete address of cognizant sponsoring service/agency/activity headquarters office. Provide lower level activity, program, project, contract administration, or field office information in Continuation Block below, on duplicate of this page, or on separate sheet of paper.

b. Case reference no. _____

c. Government agency program or project to be supported by Block 2 item(s). Identify end-user agency if not sponsoring agency.

Contact's name _____

Signature _____ Date ____/____/____

Title _____

Telephone _____ FAX _____

d. Statement of urgency of particular program or project and Applicant's part in it. Specify the extent to which failure to obtain requested assistance will adversely affect the program or project.

e. Government agency/activity actions taken to attempt resolution of problem.

f. Recommendation.

10. ENDORSEMENT by authorized Department or Agency headquarters official (omit signature if this form is electronically generated and transmitted - use of name is deemed authorization). This endorsement is required for all Department of Defense and foreign government requests for assistance.

Signature of authorized official

Title

Print or type name of authorized official

Date

CONTINUATION BLOCK

Identify each statement with appropriate block number

INSTRUCTIONS FOR FILING FORM BXA-999

REQUESTS FOR SPECIAL PRIORITIES ASSISTANCE (SPA) MAY BE FILED for any reason in support of the Defense Priorities and Allocations System (DPAS); e.g.: when its regular provisions are not sufficient to obtain delivery of item(s)¹ in time to meet urgent customer or program/project requirements; for help in locating a supplier or placing a rated order; to ensure that rated orders are receiving necessary preferential treatment by suppliers; to resolve production or delivery conflicts between or among rated orders; to verify the urgency or determine the validity of rated orders; or to request authority to use a priority rating. **Requests for SPA must be sponsored by the cognizant U.S. Government agency responsible for the program or project supported by the Applicant's² contract or purchase order.**

REQUESTS FOR SPA SHOULD BE TIMELY AND MUST ESTABLISH:

- The urgent defense (including civil emergency) or energy program or project related need for the item(s); and that
- The Applicant has made a reasonable effort to resolve the problem.

APPLICANT MUST COMPLETE BLOCKS 1-8. SPONSORING U.S. GOVERNMENT AGENCY/ACTIVITY MUST COMPLETE BLOCKS 9-10. Sponsoring agency, if not the Department of Defense (DOD), must obtain DOD concurrence if the agency is supporting a DOD program or project. This form may be mechanically or electronically prepared and may be mailed, FAXed, or electronically transmitted.

WHERE TO FILE THIS FORM:

- Private sector Applicants should file with their respective customers as follows: **lower-tier suppliers** file with customer/subcontractor for forwarding to subcontractor/prime contractor; **subcontractors/suppliers** file with prime contractor for forwarding to one of the below listed cognizant U.S. Government (DPAS Delegate) agencies; **prime contractors** file directly with one of the below listed cognizant U.S. Government (DPAS Delegate) agencies --
 - **Department of Defense (DOD)** -- File with the local Defense Contract Management Area Office, plant representative or contracting officer, or the appropriate DOD military service, associated agency, program, or project office.
 - **Department of Energy (DOE)** -- File with the appropriate Field Operations Office. Requests for SPA for domestic energy projects should be filed with DOE headquarters in Washington, D.C.
 - **General Services Administration (GSA) and Federal Emergency Management Agency (FEMA)** -- File with the contracting officer in the agency's regional office or with its headquarters office in Washington, D.C.
- Applicants who are lower level **contract administration, program, project, or field offices**, or when these activities can not resolve the private sector request for assistance, should forward this form to cognizant sponsoring service/agency/activity headquarters for review, Block 10 endorsement, and forwarding to the U.S. Department of Commerce. **Foreign government or private sector entities** should file directly with the DOD Office of the Secretary of Defense. **Timely review and forwarding is essential to providing timely assistance.**
- If for any reason the Applicant is unable to file this form as specified above, see CONTACTS FOR FURTHER INFORMATION below.

CONTACTS FOR FURTHER INFORMATION:

- For any information related to the production or delivery of items against particular rated contracts or purchase orders, contact the cognizant U.S. Government agency, activity, contract administration, program, project, or field office (see WHERE TO FILE above).
- If for any reason the Applicant is unable file this form as specified in WHERE TO FILE above, if the cognizant U.S. Government agency for filing this form cannot be determined, or for any other information or problems related to the completion and filing of this form, the operation or administration of the DPAS, or to obtain a copy of the DPAS or any DPAS training materials, contact the **Office of Strategic Industries and Economic Security, telephone (202) 482-3634, or FAX (202) 482-5650.**

APPLICANTS REQUIRING PRIORITY RATING AUTHORIZATION TO OBTAIN PRODUCTION OR CONSTRUCTION EQUIPMENT for the performance of rated contracts or orders in support of DOD programs or projects must file **DOD Form DD-691, "Application for Priority Rating for Production or Construction Equipment"** in accordance with the instructions on that form. For DOE, GSA, or FEMA programs or projects, Applicants may use this form unless the agency requires its own form.

SPECIAL INSTRUCTIONS:

- If the space in any block is insufficient to provide a clear and complete statement of the information requested, use the **Continuation Block** provided on this form or a separate sheet to be attached to this form.
- Entries in Block 3 should be limited to information from a single contract or purchase order. If SPA is requested for additional contracts or purchase orders placed with a supplier for the same or similar items, information from these contracts or purchase orders may be included in one application. However, each contract or purchase order number must be identified and the quantities, priority rating, delivery requirements, etc., must be shown separately.
- If disclosure of certain information on this form is prohibited by security regulations or other security considerations, enter "classified" in the appropriate block in lieu of the restricted information.

FOOTNOTES:

1. "Item" is defined in the DPAS as any raw, in process or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process or service.
2. "Applicant," as used in this form, refers to any person requiring Special Priorities Assistance, and eligible for such assistance under the DPAS. "Person" is defined in the DPAS to include any individual, corporation, partnership, association, any other organized group of persons, a U.S. Government agency, or any other government.

BURDEN ESTIMATE AND REQUEST FOR COMMENT

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing the form. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Robert Kugelman, Director of Administration, Bureau of Export Administration, Room 3889, U.S. Department of Commerce, Washington, D.C. 20230. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

SECTION B

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

QUESTIONS AND ANSWERS

As an aid to understanding the DPAS regulation, this section presents questions with answers about its major provisions and special features. Although most questions are asked from the point of view of a contractor or supplier and address private sector concerns, many of the questions are applicable to Government agency users, and some questions directly address public sector concerns. For ease of reference, the questions and answers are grouped under ten categories. If you need further information, please contact the DPAS Program Manager at the Office of Strategic Industries and Economic Security (SIES), U.S. Department of Commerce, at tel.: (202) 482-3634, or FAX: (202) 482-5650.

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A. RATED ORDERS

Legal Authority

Question: What is the legal authority for using priority ratings on contracts and purchase orders?

Answer: The primary authority is found in Title I of the Defense Production Act of 1950, as Amended (50 U.S.C. App. 2061 et seq.). Additional authority is found in Section 18 of the Selective Service Act of 1948 (50 U.S.C. App 468) and several other related authorities (10 U.S.C. 2538, and 50 U.S.C. 82); and in Section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (44 U.S.C. 5121, et seq. [See Section C of this booklet for reprints of the relevant priorities and allocations provisions of the these statutes.] This authority, for industrial resources, is delegated to the Department of Commerce and is administered within the Department by SIES under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700).

Rated and Unrated Orders

Question: What is a rated order?

Answer: A rated order is a prime contract, subcontract, or purchase order issued in support of an approved national defense or energy program, and which requires preferential treatment in accordance with the provisions of the DPAS. An unrated order is synonymous with commercial order.

A rated order must contain (1) a priority rating, (2) a required delivery date or dates, (3) the signature (manually placed order) or the name (electronically placed order) of a person authorized to sign the order, and (4) a statement that reads in substance:

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR 700).

The elements of a rated order are discussed in section 700.12 of the DPAS.

Question: How does a rated order differ from an unrated order?

Answer: Under the DPAS, rated orders must be accepted by persons capable of their performance. Rated orders must also be given precedence over unrated orders as necessary to meet required delivery dates.

Authority to Use Priority Ratings

Question: Who is authorized to include priority ratings on contracts and purchase orders?

Answer: Certain U.S. government agencies (Delegate Agencies) and the Canadian Government are authorized by the Department of Commerce to include priority ratings on contracts and orders placed with U.S. contractors and suppliers in support of approved national defense or energy programs. DPAS Schedule 1 lists the currently approved programs and the agency responsible for each program.

U.S. private sector contractors may be specially authorized on a case-by case basis to use priority ratings to support the purchase of production or construction equipment; to expand, rebuild, or replace plant facilities; or to obtain items not automatically ratable under the DPAS. Similarly, foreign entities and certain other U.S. government agencies may also be specially authorized on a case-by-case basis to use priority ratings on their contracts or orders placed with U.S. suppliers when their procurement requirements are in the U.S. national defense interest.

Instructions on how to request priority rating authority are found in Section 700.51 of the DPAS. Foreign entities, including Canadian contractors, should also see section 700.55 of the DPAS.

B. PRIORITY OF RATED ORDERS

Levels of Priority

Question: Do some rated orders take preference over other rated orders?

Answer: Yes. There are two levels of priority ratings identified by the rating symbols "DO" and "DX". All DO rated orders have equal priority status with each other and take preference over unrated orders. All DX rated orders have equal priority status with each other and take preference over DO rated orders and unrated orders.

The levels of priority are discussed in section 700.11(a) of the DPAS.

Question: What are "BRICKBAT" and "CUECAP" ratings and what is their relationship to the "DX" and "DO" rating symbols?

Answer: "BRICKBAT" and "CUECAP" is Department of Defense (DOD) terminology. "BRICKBAT" is used to refer to those DOD programs designated by the President as being of the highest national priority. The "DX" rating symbol under DPAS is used on contracts and orders placed in support of these programs. "CUECAP" is used to refer to those DOD programs designated by the Secretary of Defense as being of the highest defense interest. The "DO" rating symbol under DPAS is used on contracts and orders placed in support of these programs. BRICKBAT and CUECAP programs are listed in a classified DOD document called the Master Urgency List (MUL).

Program Identification Symbols

Question: What is the significance of the letter and number which follow a rating symbol?

Answer: These symbols simply indicate which approved program is being supported by the rated order. They do not connote any priority. DPAS Schedule 1 lists the program identification symbols which identify currently approved programs.

Program identification symbols are discussed in section 700.11(b) of the DPAS.

Impact on Production Schedules

Question: Must I reschedule or delay production of unrated orders to fill a rated order?

Answer: Yes, but ONLY as necessary to meet the required delivery date or dates on the rated order. Normally, rated orders should be placed by your customers with adequate lead time to permit you to schedule their completion with no disruption. However, if such scheduling is not possible, you must displace unrated or lower rated orders, as necessary, to satisfy the required delivery date or dates

Preferential scheduling of rated orders is discussed in section 700.14 of the DPAS.

Directives

Question: What is the effect of a Directive issued by SIES?

Answer: A Directive takes preference, as necessary, over all DX or DO rated orders and unrated orders you have received, except as otherwise stated in the Directive. For example, Directives can be used to reschedule production or delivery of particular items to meet a changing defense program urgency or conflicting defense program requirements. You must comply with the provisions of a Directive.

Directives are discussed in section 700.62 of the DPAS.

C. RECEIVING, ACCEPTING, AND PLACING RATED ORDERS

Receiving Rated Orders

Question: What are my obligations upon receipt of a rated order?

Answer: The receipt of a rated order triggers your obligations under the DPAS and requires that you be thoroughly familiar with, and comply with, the regulation.

The DPAS has three basic elements:

- (1) **Mandatory Acceptance.** You must accept and fill all rated orders you receive with certain exceptions as set forth in section 700.13(b) and (c) of the DPAS.
- (2) **Priority Scheduling.** You must schedule production, including the acquisition of all needed production items, to satisfy the delivery requirements of each rated order you receive.
- (3) **Mandatory Extension.** You must place rated orders with your suppliers to obtain items needed to fill a rated order.

Accepting and scheduling rated orders, and placing rated orders with suppliers, are discussed in sections 700.13-15 of the DPAS.

Rated Orders From Foreign Entities

Question: May foreign entities (government agencies or contractors) place rated orders with U.S. suppliers?

Answer: Yes. Foreign entities (other than the Canadian Government and authorized Canadian contractors) may place rated orders with U.S. suppliers only with the express written authorization of SIES on a case-by-case basis where the procurement is deemed by the U.S. Department of Defense to be in the U.S. national defense interest. Special rules apply to the use of rated orders in the U.S. by the Canadian Government and authorized Canadian contractors. [See Appendix IV to the DPAS for further information on this special U.S.-Canadian arrangement.] Rated orders received from Canadian or other foreign entities have equal priority status with rated orders received from U.S. Government agencies or contractors. Priorities assistance programs with Canada and other nations are discussed in section 700.55 of the DPAS.

Accepting and Rejecting Rated Orders

Question: Must I accept a rated contract or order from a customer with whom I have never done business?

Answer: Yes. Except as provided in the DPAS, you must accept and fill all rated orders you receive. The fact that you have had no previous business relationship with the customer, or do not wish to do business with the customer, is not a valid reason to reject the order.

Provisions related to acceptance and rejection of rated orders are found in section 700.13 of the DPAS.

Question: May I accept a rated order contingent upon obtaining necessary production materials or equipment?

Answer: No. Rated contracts and orders may not be accepted on a contingent basis. If you cannot meet the required delivery date, you must inform your customer of the earliest date on which delivery can be made, and offer to accept the order on the basis of that date.

Question: Must I accept a rated order for an item that I do not produce, or that I produce only for use in my production process (captive production)?

Answer: No. You may reject the rated order if you are not capable of producing or supplying the item, or if you have not sold the item for at least two years prior to the date of receipt of the order. See section 700.13(c) of the DPAS for information about optional rejection of a rated order. Also see section 700.13(d) for customer notification requirements.

Protection Against Claims

Question: If by accepting a rated order I must delay delivery against unrated orders, am I protected against claims from my customers for damages caused by this delay?

Answer: Yes. Such protection is provided under Section 707 of the Defense Production Act of 1950. See section 700.90 of the DPAS. You may not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of the statute, the DPAS, or a Directive issued by SIES.

Placing Rated Orders

Question: When must I place rated orders with my suppliers?

Answer: Under the rule of Mandatory Extension, you must use rated orders to purchase such items as (1) production or construction materials, (2) component parts, (3) services, (4) containers or other packaging materials needed to make delivery, or (5) maintenance repair, and operating supplies that you need to produce finished items to fill a rated order.

The DPAS also provides for several optional uses of rated orders such as replacing inventoried items used to fill rated orders.

Extension of priority ratings is discussed in section 700.15 of the DPAS. Details on how to use rated orders are found in section 700.17 of the DPAS.

D. USING RATED ORDERS

Rated Order Format (Written or Electronic)

Question: Must a rated order be in writing or may I give it verbally to my supplier over the telephone? May it be placed electronically?

Answer: Rated orders may be placed with suppliers either in writing or by electronic data transmission. Regardless of common industry practice, if the order is given verbally, it must be followed-up immediately either in writing or by an electronic data transmission. The order is not deemed rated under the DPAS until the supplier receives the written order or the electronic data transmission. Acceptance or rejection of the order by the supplier must also be in writing or by electronic data transmission. However, reasons for rejection of an order must be provide in writing (NOT electronically).

The elements of a rated order are discussed in section 700.12 of the DPAS. Customer notification requirements are found in section 700.13(d) of the DPAS.

Minimum Rated Order Dollar Amount

Question: Must I use a priority rating on purchase orders for small dollar value procurement?

Answer: If the dollar value of the order is for less than one half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold [currently \$50,000] (see FAR section 2.101), use of a priority rating is optional, PROVIDED that delivery of the needed items can be obtained in a timely fashion without the use of a priority rating.

Conflicting Rated Orders

Question: If I encounter production or shipment conflicts following acceptance of several rated orders of equal priority status that will result in delayed delivery or performance against one or more of these orders, which of the conflicting orders should be given delivery or performance preference?

Answer: You should give preference to the order or orders in the sequence in which delivery or performance is required. For conflicting rated orders received on the same day, you should give preference to the order or orders with the earliest receipt date. If you can not otherwise

resolve the delivery or performance conflict, or if your customer objects to the rescheduling of the delayed order, you should promptly request special priorities assistance (SPA).

For any rated order that will be delayed, you must notify your customer as provided in section 700.13(d)(2) of the DPAS. Conflicting rated orders are discussed in section 700.14(c) of the DPAS, and information about SPA is found in sections 700.50-54 of the DPAS.

Discrimination Against Rated Orders

Question: Can my supplier charge a higher price to produce, deliver, or perform against my rated order?

Answer: No. Your supplier may not discriminate against your rated order in any manner. Nor may the supplier impose any different terms or conditions than for comparable unrated orders. Of course, you must be willing and able to meet your supplier's regularly established terms of sale.

Acceptance and rejection of rated orders are discussed in section 700.13 of the DPAS.

Replacing Inventory

Question: If I use inventoried items to fill a rated order, may I replace those items by using a rated order?

Answer: Yes. You may use a rated order to replace inventoried items if you place the order with your supplier within 90 days of the date of use of the items. However, you may only use the DO rating symbol on the order, even if the customer's order was rated DX.

Using rated orders to replace inventory is discussed in section 700.17(b) of the DPAS.

Combining Rated and Unrated Orders

Question: I buy large quantities of a component item from one supplier to be used in the production of finished items for both defense (rated) and commercial (unrated) contracts. May I combine my rated and unrated requirements in one purchase order to obtain larger quantity discount pricing, to reduce my administrative expenses, and/or to improve the efficiency of my procurement system?

Answer: Yes, you may combine rated and unrated order requirements on one purchase order provided that you follow the provisions of section 700.17(d) of the DPAS. The rated quantities must be identified clearly and separately (e.g., by line item) on the purchase order; and the priority rating, the delivery date or dates, and the signature or name of an individual authorized to sign rated orders must also be included. The purchase order must also contain a statement similar to the one set forth in section 700.17(d)(1)(ii) of the DPAS.

Purchasing Minimum (Commercially Procurable) Quantities

Question: To fill a rated order, I need to purchase a quantity of items that is less than my supplier's minimum (commercially procurable) quantity. Is my supplier obligated to accept and fill a rated order for such a quantity?

Answer: No. However, as provided in section 700.17(e) of the DPAS and if reasonable to do so, you may place a rated order for the minimum commercially procurable quantity. If possible, you must combine rated orders to the supplier as provided in section 700.17(c) and (d).

Purchasing Production or Construction Equipment

Question: May I use a rated order to purchase machine tools or other production equipment needed to produce items to fill a rated order; or construction equipment needed to support the construction of a defense facility under a rated order?

Answer: Yes. However, you must obtain specific priority rating authorization. See section 700.51 of the DPAS for information on obtaining this authorization. Special rules pertaining to machine tools (metalworking machines) are found in section 700.32 of DPAS.

E. LIMITATIONS ON USING RATED ORDERS

General Limitations

Question: Are there limitations on the use of rated orders?

Answer: Yes. Basically, you may not place a rated order unless you have received a rated order or have been given explicit authority to place a rated order by a Delegate Agency or SIES. Rated orders may not be used to obtain:

- (1) Delivery on a date earlier than needed to fill a rated order;
- (2) A quantity of material greater than needed to fill a rated order, except to obtain a minimum commercially procurable quantity;
- (3) Items in anticipation of the receipt of a rated order, unless specifically authorized by SIES;
- (4) Items for plant improvement, expansion, or construction, unless the items will be physically incorporated into a construction project to fill a rated order.
- (5) Production or construction equipment, unless specifically authorized by a Delegate Agency or SIES; or
- (6) Items excluded from the automatic rating provisions of the DPAS or outside of the jurisdiction of the Department of Commerce.

As a general rule, rated orders may be used only to support the procurement of items needed to meet the tactical, logistical, or operation requirements of approved programs. They may not be used to support the procurement of any items that will be used primarily for administrative purposes. For further information about this limitation and how it may apply to specific situations, please contact DPAS staff at SIES (tel.: (202) 482-3634, or FAX: (202) 482-5650).

Limitations on the use of rated orders are discussed in section 700.18 of the DPAS.

Purchasing Transportation Services or Fuels

Question: May I use a rated order to purchase --

- transportation services?
- fuel, especially if I am having difficulty getting the natural gas, electricity, or fuel oil I need to keep my operations going to fill rated orders?

Answer: No. Neither transportation services nor fuels fall under the jurisdiction of the Department of Commerce, and, therefore, priority ratings under the DPAS may not be used to obtain these items. However, you should promptly contact DPAS staff at SIES at tel. (202) 482-3634 or FAX (202) 482-5650 for assistance.

For a complete list of items not under the jurisdiction of the Department of Commerce, see section 700.18(b) of the DPAS.

Purchasing From Foreign Suppliers

Question: May I use a rated order to purchase finished items, components, or production materials from a foreign supplier?

Answer: No. The DPAS, and therefore priority ratings, has no legal standing outside of the United States. However, if you need assistance to obtain items from a supplier in a foreign country, you should request Special Priorities Assistance (SPA), as DPAS staff at SIES may be able to help you. For information on requesting SPA, see sections 700.50-54 of the DPAS. If the supplier is a Canadian company, and based on special arrangements with Canada, SIES can request informal assistance from the Canadian Government to help you secure timely delivery of the needed items. Section 700.55(b) and Appendix IV of the DPAS contains information about this special U.S.-Canadian arrangement.

If you are working on a rated contract from your customer and are supported by a foreign (other than Canada) supplier who in turn, needs to acquire items from a lower-tier vendor in the U.S., the foreign supplier may be authorized by DPAS staff at SIES to place a rated order with the U.S. vendor. See section 700.55(c) of the DPAS for information about granting priority rating authority to foreign contractors and suppliers. Special rules applicable to Canadian suppliers who need to place rated orders with U.S. vendors are found in section 700.55(b).

F. SPECIAL PRIORITIES ASSISTANCE AND PRIORITY RATING AUTHORITY:

Special Priorities Assistance

Question: If I cannot obtain timely delivery of an item needed to fill a rated order, my supplier refuses to accept a rated order, or I cannot locate a supplier, what should I do?

Answer: You should apply promptly for special priorities assistance on Form BXA-999. You may obtain this form either from the involved Government agency contract administration, procurement, or field office, or from SIES (tel.: (202) 482-3634, or FAX: (202) 482-5650). The form is available in hard copy by mail, by FAX, or by electronic data transmission.

Special priorities assistance can be provided for any reason in support of the DPAS. However, you should have an urgent need for the item, you should exercise a reasonable effort to resolve the problem before seeking assistance, and your request for assistance should be timely.

For further information on requesting special priorities assistance, see sections 700.50-55 of the DPAS. A sample copy of Form BXA-999 with instructions on how to complete the form and file it is found in Appendix I to the DPAS.

Priority Rating Authority

Question: To fill a rated order, I require an item not normally ratable under the DPAS. Without the rated order, I cannot get timely delivery of the item. What should I do?

Answer: You may request a priority rating authorization by following the instructions given in section 700.51 of the DPAS. This section includes information on how to obtain a priority rating authorization to support the purchase of items such as production or construction equipment or items needed to expand, rebuild, or replace plant facilities in order to meet rated order requirements.

Advanced Priority Rating Authority

Question: I've been producing a certain defense item for several years, and I anticipate receiving a follow-on contract. May I use a rated order to purchase long lead time production materials in advance of the receipt of a rated order from my customer?

Answer: Yes, but only if you are specifically authorized to do so by SIES as provided in section 700.51(c) of the DPAS.

Priority Rating Authority for Foreign Governments

Question: I am a foreign government (other than Canada) [e.g., NATO] and I need to use a priority rating on a contract with a U.S. supplier in order to obtain timely delivery of defense items. How do I obtain priority rating authorization to support my requirement?

Answer: You may request priority rating authorization as provided in section 700.55(a) and (c) of the DPAS. We request that you complete Form BXA-999 (a sample copy with instructions is found in Appendix I to the DPAS and you may obtain this form either from SIES (tel.: (202) 482-3634, or FAX: (202) 482-5650) and file it with the U.S. Department of Defense (DOD) so that it may be sponsored for action to the U.S. Department of Commerce. DOD must determine that granting you such priority rating authority would be in the U.S. national defense interest.

Priority Rating Authority for Foreign Contractors

Question: I am a foreign (other than Canada) contractor who has received a contract to supply an item for an approved U.S. Government national defense program and I need to obtain timely delivery of production materials or components from a U.S. supplier. May I use a priority rating on my contract or purchase order to support this procurement?

Answer: No, unless you are specifically authorized to do so by SIES as provided in section 700.55(c) of the DPAS. Canadian contractors should follow the instructions provided in section 700.55(b).

Confirmation of a Rated Order or Directive

Question: My supplier tells me that delivery of my order will be delayed because of receipt of a rated order that will take priority. Another supplier tells me that there will be a delay in delivery of my order because of the terms of a Directive issued by SIES. May I request confirmation of the priority of the rated order and the Directive?

Answer: Yes. You should contact SIES for confirmation (tel.: (202) 482-3634; FAX: (202) 482-5650). Your suppliers are not obligated to give you copies of the Directive or any information about the rated order.

Adjustments, Exceptions, and Appeals

Question: If a provision of the DPAS or a Directive issued by SIES causes me undue or exceptional hardship, what recourse do I have?

Answer: You may submit a request for relief to SIES by following the procedures found in section 700.80 of the DPAS.

If SIES does not provide the relief you seek or denies your request, you may appeal to the Assistant Secretary for Export Administration, Department of Commerce, as provided in section 700.81 of the DPAS.

G. RATED ORDERS FOR ENERGY PROJECTS

Priority Rating Authorizations

Question: How do I obtain authorization to use a priority rating to ensure timely delivery of items in support of a domestic energy project?

Answer: You must submit a request for such authorization to the Department of Energy (DOE). If DOE determines that the project maximizes domestic energy supplies and that the materials, equipment, and/or services involved are critical and essential to the project, DOE will refer the request to SIES. SIES must then find that the items are scarce and that there is a need to use the priorities authorities. If SIES makes these findings, it will authorize the use of a priority rating.

For a complete discussion of priority ratings and rated orders in support of energy projects, see sections 700.20-21 the DPAS.

Examples of Energy Projects

Question: In general, what types of domestic energy projects will be considered by DOE for priority rating authority?

Answer: Projects which maximize domestic energy supplies include domestic energy exploration, production, refining, transportation, conservation, and the construction or maintenance of energy facilities. The criteria used by DOE to make its project determinations are published in 10 CFR Part 216.

H. RATED ORDERS FOR CIVIL EMERGENCY PREPAREDNESS

Priority Rating Authorizations

Question: DPAS has only been used to support approved national defense and energy programs. How can it be used to support civil emergency preparedness activities and programs?

Answer: The definition of "national defense" in the Defense Production Act has been amended to include "emergency preparedness activities" conducted pursuant to Section 602 of the Stafford Act (see Section C of this booklet for a reprint of the relevant priorities and allocations provisions of the DPA and the emergency preparedness provisions of Section 602 of the Stafford Act). However, the Federal Emergency Management Agency (FEMA) must approve the activity or program for priorities support. Such approval will not be given unless the civil emergency preparedness disaster situation is serious enough to require Federal intervention and assistance, and timely delivery of urgently required industrial products, materials, and/or services cannot otherwise be obtained. Upon FEMA approval and SIES determination that there is a need to use the DPAS authority, DPAS staff issue a priority rating authorization.

For further information about Stafford Act emergency preparedness activities and programs, contact FEMA. For further information about DPAS support for these activities and programs, contact DPAS staff at SIES (tel: (202) 482-3634; FAX: (202) 482-5650).

I. COMPLIANCE

Refusal to Accept or Comply with a Rated Order

Question: If my supplier refuses to accept or comply with a rated order, what should I do?

Answer: You should attempt to obtain the reason for refusal in writing. If the reason conforms to any of the provisions in section 700.13(b) or (c) of the DPAS, you should first seek an alternative source of supply. If there is no alternative source that can meet your requirements, you should promptly file Form BXA-999 with the involved Government agency procurement, contract administration, or field activity office, or contact SIES (tel. (202) 482-3634; FAX (202) 482-5650). If the supplier refuses to give a reason or the reason does not conform to the provisions of section 700.13, you should promptly contact SIES.

Instructions on how to obtain special priorities assistance are found in sections 700.50-55 of the DPAS.

Penalties

Question: What are the consequences if I refuse to accept a rated order, to schedule production to fill a rated order by the required delivery date, to provide requested information to the involved Government agency or to SIES, or to follow any other applicable provision of the DPAS.

Answer: The Defense Production Act of 1950 (DPA) provides for criminal penalties of up to a \$10,000 fine, one year in prison, or both, upon conviction of a willful violation. The Selective Service Act of 1948, and the other related priorities authorities (10 U.S.C. 2538, and 50 U.S.C. 82), provide for criminal penalties of up to a \$50,000 fine, three years in prison, or both.

The DPA also provides for a civil proceeding to enjoin a person from taking or not taking any action that would violate a provision of the DPA and/or the DPAS.

Compliance and criminal penalty provisions are set forth in sections 700.70-75 of the DPAS.

J. DPAS TRAINING AND APPENDIX DOCUMENTS

Availability of Training and Briefing Materials

Question: How may I obtain further information about the DPAS. Also, how may I obtain training and briefing materials so that I can inform the people in my organization about its requirements and benefits?

Answer: Any questions or requests for further information about the DPAS should be directed to DPAS staff at SIES at tel.: (202) 482-3634; FAX (202) 482-3634; address: SIES

Training and briefing materials are available in several different formats to best meet your needs. These materials include copies of this booklet, view charts, and a 20 minute video and they may be obtained from SIES in hard copy or electronically. Because there is no copyright restriction, you may copy and use these materials in any way you wish.

In addition, DPAS staff is available to give on-site training and briefing presentations upon request. Please contact DPAS staff for further information.

DPAS Appendix Documents

Question: How may I obtain copies of the DPAS Appendix documents (i.e., Appendix I: Form BXA-999 to Request for Special Priorities Assistance; Appendix II: DPAS Delegations of Authority to the Departments of Defense and Energy, the General Services Administration, and the Federal Emergency Management Agency; Appendix III: Interagency Memoranda of Understanding Between the Department of Commerce and the Departments of Agriculture, Energy, and the Interior/U.S. Geological Survey; Appendix IV: U.S.-Canadian Memorandum of Understanding; and Appendix V: DPAS Emergency Delegation 1)?

Answer: Form BXA-999 is available by mail, FAX, or electronically from any Department of Defense contract administration, procurement, or field office, or from SIES (tel.: (202) 482-3634; FAX (202) 482-3634), or through the Department of Commerce/Bureau of Export Administration Internet web site at: <http://www.bxa.doc.gov>. The other Appendix documents are available only from SIES and can be mailed, FAXed, or electronically transmitted.

SECTION C

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

STATUTORY AUTHORITY

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Priorities and Allocations Provisions

DEFENSE PRODUCTION ACT of 1950, as AMENDED (50 U.S.C. App. 2061 et seq.)

As of December 18, 1995

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Section 101. Priorities and Allocations.

(a) *National defense.* The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

(b) *Control of distribution.* The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

(c) *Maximize domestic energy supplies.*

(1) Notwithstanding any other provision of this Act, the President may, by rule or order, require the allocation of, or the priority performance under contracts or orders (other than contracts of employment) relating to, materials, equipment, and services in order to maximize domestic energy supplies if he makes the findings required by paragraph (2) of this subsection.

(2) The authority granted in this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that --

(A) such materials, services, and facilities are scarce, critical, and essential (i) to maintain or expand exploration, production, refining, transportation; (ii) to conserve energy supplies, or (iii) to construct or maintain energy facilities; and

(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

(3) During any period when the authority conferred by this subsection is being exercised, the President shall take such action as may be appropriate to assure that such authority is being exercised in a manner which assures the coordinated administration of such authority with any priorities or allocations established under subsection (a) of this section and in effect during the same period.

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Section 103. Willful violations. Any person who willfully performs any act prohibited or willfully fails to perform any act required, by the provisions of this title or any rule, regulation or order thereunder, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

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Section 702. Definitions. For purposes of this Act, the following definitions shall apply:

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(9) *FACILITIES* -- The term "facilities" includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

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(11) *INDUSTRIAL RESOURCES* -- The term "industrial resources" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial capacity.

(12) *MATERIALS* -- The term "materials" includes: (A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and (B) any technical information or services ancillary to the use of such materials, commodities, articles, components, products, or items.

(13) *NATIONAL DEFENSE* -- The term "national defense" means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq].

(14) *PERSON* -- The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

(15) *SERVICES* -- The term "services" includes any effort that is needed for or incidental to: (A) the development, production, processing, distribution, delivery, or use of an industrial resource . . .; or (B) the construction of facilities.

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Section 704. Regulations and Orders.

(a) *In General* -- Subject to section 709 (Public Participation in Rulemaking) and subsection (b) (Procurement Regulations), the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out this Act.

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Section 705. Compliance and Enforcement.

(a) *General provisions.* The President shall be entitled, while this Act is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. The President shall issue regulations ensuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) *Production of records.* The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if prior to the return date specified in the regulations, subpoena, or other document issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) *Willful violations.* Any person who willfully performs any act prohibited or willfully fails to perform any act required by the above provisions of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than \$10,000 or imprisoned for not more than one year or both.

(d) *Confidentiality of information.* Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(e) *Record of Testimony.* Any person subpoenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.

Section 706. Injunctive relief and jurisdiction of the federal courts.

(a) *Injunctions.* Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) *Jurisdiction.* The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act or any rule, regulation, order, or subpoena thereunder, and of all civil actions under this Act to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpoena thereunder. . . .

Section 707. Exculpatory provision. No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act notwithstanding the any such rule, regulation,

or order shall thereafter be declared by judicial or other competent authority to be invalid. No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under title I of this Act or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

Priorities Provisions

**SECTION 18 of the SELECTIVE SERVICE ACT of 1948
(50 U.S.C. App. 468)**

Utilization of Industry

(a) Placement of orders.

Whenever the President . . . determines that it is in the interest of the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the armed forces of the United States, . . . he is authorized, through the head of any Government agency, to place with any person operating a plant, mine, or other facility capable of producing such articles or materials an order for such quantity of such articles or materials as the President deems appropriate

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(b) Precedence of Government placed orders.

It shall be the duty of any person with whom an order is placed pursuant to the provisions of subsection (a) of this section, (1) to give such order such precedence with respect to all other orders (Government or private) theretofore or thereafter placed with such person as the President may prescribe, and (2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible.

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(f) Penalties.

Any person, or any officer of any person as defined in this section, who willfully fails or refuses to carry out any duty imposed upon him by subsection (b) of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than three years, or by a fine of not more than \$50,000, or by both such imprisonment and fine.

(g) Definitions.

(1) As used in this section --

(A) The term "person" means any individual, firm, company, association, corporation, or other form of business organization.

(B) The term "Government agency" means any department, agency, independent establishment, or corporation in the Executive branch of the United States Government.

(2) For the purpose of this section, a plant, mine, or other facility shall be deemed capable of producing any articles or materials if it is then producing or furnishing such articles or materials or if the President . . . determines that it can be readily converted to the production or furnishing of such articles or materials.

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Note: Because the priorities authority of the Selective Service Act is limited as compared to the priorities authority of the Defense Production Act (e.g., procurement of articles or materials exclusively for use by U.S. armed forces, no protection against claims, no civil injunction provision), the Selective Service Act authority will be used only when the Defense Production Act authority has lapsed.

Civil Emergency Preparedness Provisions

SECTION 602 of the ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT (Stafford Act)

42 U.S.C. 5195a

Section 602. Definitions.

(a) *Definitions* -- For purposes of this title only:

(1) Hazard -- The term "hazard" means an emergency or disaster resulting from--

(A) a natural disaster; or

(B) an accidental or man-caused event.

(2) Natural Disaster -- The term "natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

(3) Emergency Preparedness -- The term "emergency preparedness" means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of civil population).

(B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

(4) Organizational Equipment -- The term "organizational equipment" means equipment determined by the Director to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.

(5) Materials -- The term "materials" includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.

(6) Facilities -- The term "facilities", except as otherwise provided in this title, includes buildings, shelters, utilities, and land.

(7) Director -- The term "Director" means the Director of the Federal Emergency Management Agency.

(8) Neighboring Countries -- The term "neighboring countries" includes Canada and Mexico.

(9) United States and States -- The terms "United States" and "States" includes the several States, the District of Columbia, and territories and possessions of the United States.

(10) State -- The term "State" includes interstate emergency preparedness authorities established under section 611(k) [not included in this reprint].

(b) *Cross Reference* -- The terms "national defense" and "defense" as used in the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.) includes emergency preparedness activities conducted pursuant to this title.